

Issue Paper Number 99-048



- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

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## PROPERTY TAX RULES 313 AND 321

### I. Issue

Should the Board authorize publication of amendments to the California Code of Regulations, Property Tax Rules 313 and 321, and adopt language prescribing a hearing procedure whereby the county assessor loses the presumption of correctness provided by Evidence Code section 664 once the assessor is required to present evidence in an appeals hearing?

### II. Staff Recommendation

Staff recommends that (1) the attached proposed amendments of Property Tax Rules 313 and 321 be authorized for publication and submitted to the Office of Administrative Law for publication in the California Regulatory Notice Register and (2) the Board not adopt language prescribing a hearing procedure whereby the county assessor loses the presumption of correctness provided by Evidence Code section 664 once the assessor is required to present evidence in an appeals hearing (Attachment 1).

### III. Other Alternative Considered

The Board should authorize publication of amendments of Property Tax Rules 313 and 321 clarifying that during an appeals hearing the county assessor loses the presumption of correctness afforded the county assessor in Evidence Code section 664 once the board requires the county assessor to present evidence following the applicant's presentation of evidence.

## **IV. Background**

Under Government Code section 15606, subdivision (c), the Board is given authority to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. Pursuant to that authority, the Board directed staff to review and revise sections of Title 18 of the California Code of Regulations, Subchapter 3, Local Equalization Property Tax Rules 301 through 326. Many of these rules have not been amended since their adoption in 1967.

Consistent with this direction, staff divided the rules into two groups and first drafted revisions to group 1, Property Tax Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 318, 319, 320, 322, 323, 324, 325, and 326. On July 1, 1999, the Board authorized publication of amendments to these rules. In completing the revisions process, staff drafted revisions to group 2, which includes Property Tax Rules 313 and 321. These drafts were disseminated to interested parties for comments and suggestions.

Property Taxes Department and Legal Division staff drafted the attached proposed amendments of Property Tax Rules 313 and 321. Board staff received input from the California Association of Clerks and Election Officials, the California Clerk of the Board of Supervisors Association, California Assessors' Association, County Counsels' Association of California, Los Angeles County Bar Association's State & Local Taxation Committee, the California Taxpayers' Association (Cal Tax), industry representatives, and the Taxpayers' Rights Advocate. Board staff attended the Summer Tax Conference of the California Manufacturers Association and the Institute for Professionals in Taxation Conference to participate in discussions concerning the proposed amendments to these rules.

After receiving comments and requests from interested parties to make additional changes to the proposed revisions, a second draft was prepared. The proposed amendments of Property Tax Rules 313 and 321 represent the efforts of property tax practitioners, clerks of the board, county assessors, and county counsels. This revisions process involved an extensive endeavor to include all interested parties. The attached drafts incorporate staff's position, most of interested parties' concerns, recent statutory changes, and applicable judicial rulings. Enactment of the proposed amendments will promote uniformity within the assessment appeals process throughout California.

On August 5, 1999, staff held a meeting in Sacramento with interested parties to reach an agreement on the language and issues of the proposed revisions to Property Tax Rules 313 and 321. Agreement was reached on all items except whether language should be added specifically stating that during an appeals hearing, the county assessor loses the presumption of correctness once the appeals board requires the assessor to present evidence in response to the applicant's evidence.

## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff's recommended language in subsection (c) of Rule 313 outlines the order of the presentation of evidence at a hearing in which the applicant has the burden of proof and subsection (a) of Rule 321 states that the assessor has the presumption of correctness in the performance of his or her official duties unless otherwise provided by law. Staff's language is supported by the California Assessors' Association, the County Counsels' Association of California, California Association of Clerks and Election Officials, and California Clerk of the Board of Supervisors Association (see Attachment 2).

Staff's language reflects the general principle that county assessors are presumed to have properly performed their assessment duties in accordance with law and other applicable standards. This application of the presumption imposes upon the applicant the burden of proof. The applicant may overcome the presumption by presenting substantial, competent evidence different than the county assessor's sufficient to prove by a preponderance of the evidence that the county assessor's methods or determination were not proper. It is the appeals board's duty to determine whether the applicant's evidence is sufficient to establish an opinion of value and to determine whether the evidence is sufficient to demonstrate that the county assessor did not establish a correct assessment.

**B. Pros of the Staff Recommendation**

Staff's language in subsection (c) of Rule 313 and subsection (a) of Rule 321 correctly states the rules of evidence and procedure applicable to appeals board hearings. These rules are necessary to ensure a fair, orderly, and thorough presentation of the evidence in the matter before an appeals board. In many cases, the appeals board will first evaluate both sides' evidence by requiring that both the county assessor and the applicant present evidence before determining whether the applicant has met the burden of proof. Staff's proposed language is designed to promote an informal administrative proceeding while ensuring that an applicant has an adequate opportunity to be heard.

**C. Cons of the Staff Recommendation**

Staff's language in subsection (c) of Rule 313 and subsection (a) of Rule 321 does not address whether the assessor's presumption of correctness is extinguished once the board requires the assessor to present his or her case. By meeting the burden of production, the applicant rebuts the presumption and the appeals board should cease applying the presumption of correctness to the assessor's evidence. Some appeals board members do not understand the effect of the presumption and continue to apply it even though the applicant has met the burden. The rule should expressly state that the presumption is extinguished when the board has determined that the applicant has met the burden of production and the assessor is required to present evidence.

**D. Statutory or Regulatory Change**

Action by the Board on the attached Property Tax Rules will amend Title 18 of the California Code of Regulations, Subchapter 3, sections 313 and 321.

**E. Administrative Impact**

None

**F. Fiscal Impact**

**1. Cost Impact**

None

**2. Revenue Impact**

None

**G. Taxpayer/Customer Impact**

Amendments of Property Tax Rules 313 and 321 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards,

**FORMAL ISSUE PAPER**

appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value.

**H. Critical Time Frames**

The normal assessment appeals filing period is from July 2 through September 15 of each year. In order for the amendments of Property Tax Rules 313 and 321 to be adopted and effective for the filing period beginning July 2, 2000, the Board should authorize publication of amendments to the rules at its meeting on October 7, 1999.

**VI. Alternative 1****A. Description of Alternative 1**

This alternative recommends that the staff's language for subsection (c) of Rule 313 and subsection (a) of Rule 321 be adopted with an additional sentence clarifying that, in cases in which the assessor has the presumption of correctness, once the appeals board requires the county assessor to present evidence the assessor's presumption of correctness is extinguished. This recommendation is supported by Cal Tax, the Los Angeles County Bar Association's State & Local Tax Committee, and Eagle's Lodge West (see Attachment 2).

Proponents of this alternative contend that the general rule in American jurisprudence is that a presumption, such as the presumption of correctness favoring county assessors, disappears once the taxpayer has made a sufficient "production of evidence." Proponents cite an article that appeared in the *Institute for Professions in Taxation* bulletin earlier this year which discusses aspects of assessment appeals proceedings. The article mentions the "bursting bubble" theory as one view whereby the presumption is "burst" or disappears once the county assessor is required to move forward and present evidence in an appeals hearing. This article further cites a New York Court of Appeals case which held that once a taxpayer challenging an assessment comes forward with evidence contradicting the county assessor's presumption of correctness, the presumption disappears.

**B. Pros of Alternative 1**

Proponents of Alternative 1 indicate that often appeals board members place too much weight on the county assessor's presumption of correctness and the county assessor's evidence generally. Proponents believe that the added language will reinforce in the minds of the appeals board members their duty to accord proper consideration to each sides' evidence and, therefore, to discourage board members from giving the county assessor's evidence more credence for the sole reason that it was introduced by the county assessor.

**C. Cons of Alternative 1**

Alternative 1 does not correctly state California law with regard to the application of presumptions. The applicant's meeting the burden of production simply shifts to the county assessor the burden of producing evidence but does not extinguish the presumption of correctness.

**D. Statutory or Regulatory Change**

Action by the Board on the attached Property Tax Rules will amend Title 18 of the California Code of Regulations, Subchapter 3, sections 313 and 321.

**FORMAL ISSUE PAPER**

**E. Administrative Impact**

None

**F. Fiscal Impact**

**1. Cost Impact**

None

**2. Revenue Impact**

None

**G. Taxpayer/Customer Impact**

Amendments of Property Tax Rules 313 and 321 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value.

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Prepared by: Property Taxes Department; Policy, Planning, and Standards Division

Current as of: September 17, 1999

State of California  
BOARD OF EQUALIZATION

**PROPERTY TAX RULES**

Chapter 1. State Board of Equalization — Property Tax  
Subchapter 3. Local Equalization  
Article 1. Hearing by County Board

**Rule 313. HEARING PROCEDURE.**

*Reference:* Article XIII A, California Constitution.  
Sections 110, 167, ~~1605~~, 1605.4, 1607, 1609, ~~and~~ 1609.4, 1637, Revenue and Taxation Code.  
Section 664, Evidence Code.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The ~~chairman~~ chair shall then determine if the applicant or ~~his~~ the applicant's agent is present. If neither is present, the ~~chairman~~ chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor ~~his~~ the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or ~~his~~ the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of ~~Section~~ regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code ~~§~~section 80.

(b) If the applicant or ~~his~~ the applicant's agent is present, ~~the chair or the clerk~~ shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the ~~taxable~~ value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) ~~The chairman~~ In applications where the applicant has the burden of proof, the board shall then require the applicant or his the applicant's agent to present his or her case to the board first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her case. The board shall not require the applicant to present evidence first except when the hearing involves a penalty portion. If the applicant fails to present evidence of value

~~of the property, the presumption set forth in section 321 (a) applies and the board shall not require the assessor to present his case.~~

~~(d) When a hearing involves the assessment of an owner-occupied single family dwelling, and the applicant has compiled with section 305 (c) and, if applicable, section 305.1, then the presumption in section 321 (b) applies. In such instances the chairman shall require the assessor to present appraisal data that supports the taxable value he has determined for the property subject of the hearing.~~

~~(e) When a hearing involves a penalty portion of an assessment, the assessor shall present his evidence notwithstanding the failure of the assessee or his agent to present evidence, to appear, or to request postponement of the hearing.~~

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(b) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

~~(f)(d)~~ All testimony shall be taken under oath or affirmation.

~~(g)(e)~~ The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence ~~properly~~ admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for ~~the~~ cross-examination of all witnesses and materials proffered as evidence, for argument, and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

~~(h)(f)~~ When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the ~~chairman~~ chair shall determine whether or not the assessor gave notice in writing to the applicant or ~~his~~ the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the

assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

~~(f)~~(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant ~~which~~ that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the ~~applicant~~ party to whom it relates.



State of California  
BOARD OF EQUALIZATION

**PROPERTY TAX RULES**

Chapter 1. State Board of Equalization — Property Tax  
Subchapter 3. Local Equalization  
Article 1. Hearing by County Board

**Rule 321. BURDEN OF PROOF.**

*Reference:* Sections 110, 167, 1601 et seq., Revenue and Taxation Code.  
Section 664, Evidence Code.

~~(a) The law presumes~~ Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duty to assess ~~and assessed~~ all properties fairly and upon an equal basis. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant proceed to present independent evidence relevant to the full value of the property. The assessor has the burden of establishing the basis for imposition of a penalty assessment. ~~No greater relief may be granted than is justified by the evidence produced.~~

~~(b) An exception~~ Exceptions to subsection (a) ~~applies~~ apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the ~~taxpayer or assessee~~ applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

~~(c) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.~~

~~(d) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.~~

## ISSUE: BURDEN OF PROOF

RULE	LANGUAGE SUPPORTED BY: BOARD STAFF CALIFORNIA ASSESSORS' ASSOCIATION COUNTY COUNSELS' ASSOCIATION OF CALIFORNIA CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS CALIFORNIA CLERK OF THE BOARD OF SUPERVISORS ASSOCIATION	LANGUAGE SUPPORTED BY: CAL TAX LOS ANGELES COUNTY BAR ASSOCIATION'S STATE & LOCAL TAX COMMITTEE EAGLE'S LODGE WEST
Rule 313 Subsection (c)	In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her case first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her case.	In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her case first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her case. <i>Once the board decides to require the assessor to present his or her case, the presumption of correctness as to the assessor's value is extinguished.</i>
Rule 321 Subsection (a)	Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duty to assess all properties fairly and upon an equal basis. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant proceed to present independent evidence relevant to the full value of the property. The assessor has the burden of establishing the basis for imposition of a penalty assessment.	Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duty to assess all properties fairly and upon an equal basis. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant proceed to present independent evidence relevant to the full value of the property. <i>However, if after the applicant has presented independent evidence relevant to the full value of the property, the board decides to require the assessor to present his or her evidence, the presumption that the assessor has properly performed his or her duty is extinguished.</i> The assessor has the burden of establishing the basis for imposition of a penalty assessment.